



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2010

Ms. Ashley R. Allen  
Staff Attorney - Administrative Law Section  
Legal Services Division  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2010-13942

Dear Ms. Allen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393337.

The Texas General Land Office (the "GLO") received a request for several categories of information pertaining to specified agreements, a specified company, and a named individual. Although you take no position with respect to the public availability of the submitted information, you indicate the submitted documents may contain proprietary information of a third party subject to exception under the Act.<sup>1</sup> Accordingly, you state that the GLO notified Epsilon Oil & Gas ("Epsilon") of the request for information and of Epsilon's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain

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<sup>1</sup>Although you originally raised sections 552.101, 552.102, 552.103, 552.104, 552.105, 552.107, 552.110, 552.111, 552.113, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, .302.

circumstances). We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

We must address the GLO's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state that the GLO received the present request for information on June 24, 2010. However, you did not submit the requested information until September 13, 2010. Consequently, we find that the GLO failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Accordingly, we will consider whether Epsilon's interests provide a compelling reason to withhold any portion of the submitted information from disclosure.

An interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Epsilon has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate Epsilon's proprietary interests. Accordingly, none of the information at issue may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business

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<sup>2</sup>To the extent any additional responsive information existed on the date the GLO received this request, we assume the GLO has released it. If the GLO has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). As there are no arguments against disclosure, the submitted information must be released to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 393337

Enc. Submitted documents

c: Requestor  
(w/o enclosures)